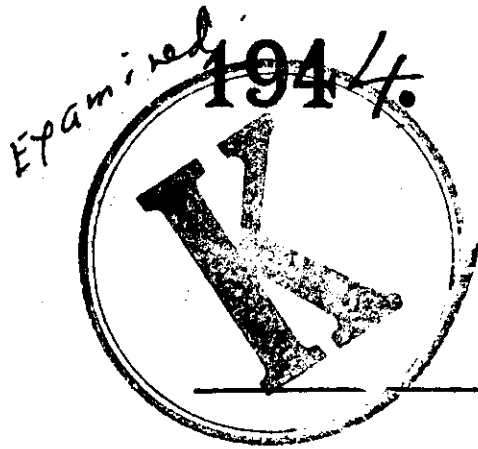




File No. S.Dwr.

Legal DEPARTMENT

A BRANCH

Subject:

Suit & Sharwar.

Cf No 295 of 1943.

Raya 11/04 Kingappa Doddaga
-ige

stff

vs.

(1) Intkirappa Bharmappa

Naik

(2) The Province of Bombay } deys.

C. A. No. 57 of 1945.

File No.

37 ©
Dwr 9/44.

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Dharwar Civil Suit No. 295 of 1943.

This is a suit for possession of S. No. 30/4 of the village of Bommapur (Taluka Navalgund). In execution of a money decree obtained by the plaintiff against the father of defendant No. 1, the suit land was attached and ordered to be sold and the execution proceedings were transferred to the Collector for sale of the attached property. In the auction sale, the plaintiff himself purchased an advance lease of the suit land for ten years. Before the sale was confirmed, the Collector returned the proceedings to the Civil Court observing that the suit land being a shet sanadi land was not liable to be sold in execution of a decree and that therefore the attachment might be removed. The Civil Court however declined to set aside the sale in the absence of the Collector's certificate under section 10 of the Watan Act and the sale was accordingly confirmed. However, on 18th January 1940 the Prant Officer, acting under the Collector's orders held that the land was a shet sanadi land burdened with service and that the discharged sanadi had no saleable interest in the land. He therefore ordered that the land should be resumed from the plaintiff's possession and restored to the original holder defendant No. 1.

In this suit the plaintiff challenges the validity of the Prant Officer's order presumably on the ground that after the Collector had sanctioned the advance lease and put the plaintiff in possession, it was not open to the Prant Officer to resume the land by dispossessing the plaintiff. This contention is not correct. In sanctioning the auction sale of the suit property the Collector was acting in his capacity as judicial officer under section 71 of the Civil Procedure Code executing a decree referred to him under section 68 of the Code. He was not thereby prevented from taking action in his

executive capacity and ordering resumption of land in which the Judgment debtor had no saleable interest. In J.R. R.D. No. 5213/28-(Confidential), dated 7th April 1937, Government have laid down that Sanadis have no saleable interest in such lands and that when the sale of any such land is ordered by a Civil Court, that Court should be informed that the decree cannot be enforced by a sale of the land and if the Court refuses to remove the attachment and desires execution of the decree by the sale of the land to proceed, the Collector should put the land to auction with a warning that it is liable to be resumed by Government and should resume the land under the rules after it is sold. That the plaintiff had purchased the land with an implied warning of the kind is evident from the fact that he purchased it subject to the condition that he would hand over possession of the land in the event of the services being ^{required} ~~resumed~~ to be performed in respect of it. The order of the Prant Officer is therefore perfectly legal and intra vires. The suit is also barred under sections 4(a) and 11 of the Bombay Revenue Jurisdiction Act. Sanction may therefore be accorded to the defence of the suit on the lines of the accompanying brief.

Rule
7/7

RLA *Am* *13/7/44*

Secy R.D. *(Signature)* *14-7-44*

3 35

In the Court of the First Class Sub-Judge, at Dharwar.
Civil Suit No.295 of 1943.

Rayappa Ningappa Doddaganiger.....Plaintiff.

vs.

- | | |
|-------------------------------------|-------------------|
| 1. Phakkirappa Bharmappa Naik.) | |
| 2. The Province of Bombay.) | Defendants. |

Written statement of the defendant No.2(Province of Bombay) is as follows :-

1. This Court has no jurisdiction to entertain this suit under the third paragraph of section 4(a) of the Bombay Revenue Jurisdiction Act.

2. The suit is barred under section 11 of the Bombay Revenue Jurisdiction Act.

3. The notice given by the plaintiff is defective and does not fulfil the requirements of section 80 of the Civil Procedure Code. It is therefore submitted that the plaint must be rejected under Order VII, Rule 11 of the Civil Procedure Code.

4. The plaintiff's claim is denied.

5. The suit land is a discharged shet sanadi land in which the defendant No.1 had no saleable interest. Under the Resumption Rules of 1908, the suit land was therefore liable to resumption in the event of an alienation.

6. In sanctioning the sale of the advance lease of the suit land and putting the plaintiff in possession of the same, the Collector had acted as a judicial officer executing a decree transferred to him under section 68 of the Civil Procedure Code. He was not thereby prevented from acting in his capacity as an executive officer and ordering resumption of the land under the resumption rules.

7. The Prant Officer's order is therefore perfectly legal and intra vires and plaintiff is not entitled to challenge it.

8. This defendant submits that shet sanadi land is land held for services being rendered to the State but it is not Watan land and is not governed by the provisions of the Watan Act. Government have been treating such land as non-watan and Government is the owner thereof. The shet sanadi land is neither alienable nor transferrable and the sanadi has no saleable interest in such land.

9. The plaintiff is consequently not entitled to hold the suit land as a lessee for ten years and Government is under no obligation to maintain him in possession of the suit land for a period of ten years.

10. The plaintiff is not entitled to possession of the suit land or mesne profits thereof.

11. It is therefore submitted that the suit fails and must be dismissed with costs.

District Government Pleader, Dharwar.

I, District Government Pleader, Dharwar, do hereby declare that what is stated in paragraphs 1 to 11 above is true according to the information received and believed to be true. This verification is made at on the day of 1944.

District Government Pleader, Dharwar.

5 ~~54~~
Suits :

Dharwar.

For possession of the suit land bearing Survey No. 30/4 situated in the village of Bommapura, taluka Navalguni and in the alternative, at plaintiff's option for recovery of Rs. 150 from the defendant's mesne profits and costs.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 5029.

Bombay Castle, 17th July 1944.

Letter from the Collector of Dharwar, No. L.A.W., dated the 9th March 1944—Forwarding

IN THE COURT OF THE FIRST CLASS SUB-JUDGE, DHARWAR.

Civil Suit No. 295 of 1943.

- papers in the suit noted in the

Rayappa Ningappa Doddaganiger

-- Plaintiff;

margin; and requesting sanction

versus

(1) Fakirappa Bharmappa Naik; (2) The Province of }
Bombay }

Defendants. to its defence.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 304, dated the 22nd March 1944—Forwarding the above with his concurrence.

MO-III Leg H 48—1

Memorandum to the District Government Pleader, Dharwar, No. 5028, dated the 17th July 1944—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original P.N.M.O.S.

P. N. MOOS,
Secretary to Government.

G. R., No. 5029, L. D., dated the 17th July 1944.

To

- *The Revenue Department,
- *The Commissioner, Southern Division,
- *The Collector of Dharwar,
- The District Government Pleader, Dharwar (with two copies of the brief).

*Issued
COP
15/9*

[*With a copy of the brief.

No. of 1944.

Copy forwarded for information and guidance to

Submitted after issue

File in a new suit file

*AM
16/9
A.P.A. 16/9*

*new file 9/44
18/9/44*

Chronological Statement of Facts.

The plaintiff has filed this suit for (i) possession of the suit land Survey No. 30/4 situated in the village of Bommapura, taluka Navalgund and (ii) in the alternative, at plaintiff's option, for recovery of Rs. 150 from the defendant's as past and future mesne profits at the rate of Rs. 50 per year during the period of plaintiff's dispossession of the land and for costs.

pp. 55-56 of file.

2. On 10th September 1923, the plaintiff obtained a money decree for Rs. 187-8-0 against one Bharmappa Khadappa Naikar of Bennur, taluka Navalgund (father of defendant No. 1) in Small Cause Suit No. 268 of 1923 in the Court of the Second Class Subordinate Judge, Dharwar. In Darkhast No. 711 of 1935, filed in execution of that decree the lease hold of the suit land belonging to defendant No. 1 was sought to be attached and sold.

p. 59 do.

3. On 29th January 1936, the Subordinate Judge transferred the execution proceedings to the Collector for sale of the attached property through the Collector. On 21st March 1936, the Collector forwarded the papers to the Mamlatdar of Navalgund for necessary action.

p. 13 do.

4. On 22nd January 1938, the sale was held by the Mamlatdar of Navalgund when the plaintiff himself purchased an advance lease of the suit land for ten years by obtaining an order of set off from the Court. On 8th March 1938, the Mamlatdar forwarded the proceedings with the sale memo to the Collector and requested that the auction sale of the advance lease for ten years may sanctioned.

p. 60 do.

5. In reply the Collector invited the Mamlatdar's attention to his office Circular No. L.A.W., dated 18th May 1937 and asked him to state why Survey No. 30/4 which was a shet sanadi land was put to auction though it had been decided by Government that sanadis had no saleable interest in such lands.

Do. do.

6. On 19th April 1938, the Mamlatdar submitted a report that the suit land was a discharged sanadi land which was to be resumed only when it was sold outright that the suit land was not sold outright but that what was sold was only the right of the discharged sanadi to enjoy the land for a certain period (in the form of an advance lease) and that consequently the sale was not in contravention of the circular referred to by the Collector.

Reverse of p. 60 do.

7. On 6th June 1938, the Collector returned the papers to the Subordinate Judge, observing that sanadi lands were service lands and that sanadis had no saleable interest in such lands. He stated further that Survey No. 30/4 being a shet sanadi land was not liable to be sold in execution of a decree and that therefore the attachment thereon may be removed (*vide* No. L.D.R. No. 1/10/36, dated 6th June 1938).

p. 61 do.

8. On 5th September 1938, the Subordinate Judge returned the papers to the Collector stating that the sale had been held on 2nd January 1938 and as the Collector had not issued any certificate under the Watan Act that the property was not liable to the process of the Civil Court the sale could not be set aside at that stage. He recommended however that the sale may be confirmed subject to the conditions laid down in the purshis (Exhibit 19) in Darkhast No. 711 of 1935. This purshis was to the effect that the land sold (Survey No. 30/4) was a discharged shet sanadi land allowed to be enjoyed without service and that in the event of services being required to be rendered at any time in the future, plaintiff would arrange for them or would hand over the possession of the suit land at the time when the services would be requisitioned.

p. 12 do.

9. On 17th October 1938, the Collector confirmed the advance lease sale as recommended by the Subordinate Judge.

Reverse of p. 61 do.

10. On 20th March 1939, an advance lease-deed was executed by the plaintiff in favour of the Mamlatdar, Navalgund, but the conditions stated by the plaintiff in the purshis Exhibit 19 of the said Darkhast were not incorporated in it. On 14th May 1939, possession of the suit land was delivered to the plaintiff.

11. On 30th October 1939, the Mamlatdar submitted a report to the Collector wherein after stating the circumstances under which the plaintiff was put in possession of the suit land he referred to the Collector's Circular No. L.A.W. of 18th May 1937 which lays down that the sanadis have no saleable interest in the sanadi lands assigned for service, and stated that if the provisions of that circular could be made applicable to discharged sanadi lands also, the suit land given on advance lease was liable to be resumed. The Prant Officer, III Division, through whom the report was submitted observed that by virtue of Government Resolution, Revenue Department, No. 5213/28 (Confidential), dated 7th April 1937, the sanadis have no saleable interest in sanadi lands and such lands are liable to be resumed even after the sale in execution of the Civil Court's decree. On 7th November 1939, the Collector returned the papers to the Prant Officer for further action.

12. On 18th January 1940, the Prant Officer ordered that Survey No. 30/4 was a shet sanadi land burdened with the condition that the discharged sanadi shall perform the service when called upon, that since the tenure of the land was not changed, the discharged sanadi had no saleable interest in the land, that consequently the advance lease sale for ten years amounted to an alienation and therefore the land should be resumed from the possession of the plaintiff and restored to the former holder under rule 4 of the Resumption Rules of 1908, as laid down in Government Resolution, Revenue Department, No. 5213/28 of the 7th April 1937.

13. On 15th February 1940, the suit land was restored to the defendant No. 1 Fakirappa and a Kabja receipt was obtained from him. On 17th February 1940, a sum of Rs. 81 was sent by Money Order by the Mamlatdar to the plaintiff for charges of cultivation incurred by the plaintiff. On 9th March 1940, the Mamlatdar reported to the Prant Officer that the suit land had been restored to defendant No. 1.

14. On 20th September 1942, plaintiff gave a notice of the suit to the Collector under section 80 of the Civil Procedure Code and on 20th July 1943, the plaintiff filed the present suit in the Court of the First Class Subordinate Judge, Dharwar.

Grounds of Defence.

There is a difference of opinion between Government on the one hand and the High Court on the other on the question whether shet sanadi lands are or are not Watan Property governed by the provisions of the Bombay Hereditary Offices Act of 1874. The view of Government as expressed in Government Resolution, Revenue Department, No. 4695 of 1899 is that lands held by shet sanadis are not Watan Property and are not subject to the operation of the Bombay Hereditary Offices Act. Government further held in Government Resolution, Revenue Department, No. 667 of 1901 that the view taken by the Bombay High Court in *Limbaji v. Rama* (1898) P. J. 127 was based upon a misapprehension and that shet sanadi had not the rights of a watandar under the said Act (*see Phadnis Watan Act 15th Edn.*, pp. 240-241). On the other hand, the Bombay High Court has held in *Vishnu v. Shanker*, 35 Bom. L. R. 114 following *Limbaji v. Rama* (1898) P. J. 127, that shet sanadi lands are watan property governed by the provisions of the Bombay Hereditary Offices Act, 1874. It would seem that the decision of the question whether a particular holding is governed by the Watan Act or not rests with the Civil Court and is final. Therefore, so long as the decisions in *Limbaji v. Rama* and *Vishnu v. Shanker* are not overruled the law is that shet sanadi holding is governed by the Watan Act. It is on this basis that the technical defences of jurisdiction will have to be taken.

2. *Jurisdiction.*—(i) It appears from the plaint that the plaintiff's main and only grievance is against the Prant Officer's order, dated 18th January 1940, declaring that the

discharged sanad had no saleable interest in the suit land and ordering resumption of the suit land. The order of resumption was passed by the Prant Officer under the Rule 4 of the Rules framed by Government (by Notification No. 10336, dated 12th October 1908) in exercise of the powers conferred on Government by Act XI of 1852 and Bombay Acts II and VII of 1863. By virtue of these powers which are reserved to Government under section 1 clause (3) of the Bombay Hereditary Offices Act, Government can deal with these holdings under the resumption rules referred to above. The order of the Prant Officer was therefore perfectly valid and *intra vires* and the plaintiff virtually seeks to set aside that order since he cannot get any of the reliefs prayed for by him so long as that order is in effect. The suit is therefore barred under the third paragraph of section 4 (a) of the Bombay Revenue Jurisdiction Act which enacts that a Civil Court has no jurisdiction to entertain suits to set aside or avoid any order under the Bombay Hereditary Offices Act, 1874, or any other law relating to the same subject for the time being in force, passed by the Provincial Government or any other officer duly authorized in that behalf. The suit is also barred under section 11 since the plaintiff has failed to prefer an appeal against the order of the Prant Officer as provided by section 77 of the Bombay Hereditary Offices Act. It should therefore be urged that the Court has no jurisdiction to entertain this suit.

3. *Notice.*—The notice of the suit given by the plaintiff is defective and does not fulfill the mandatory provisions of section 80 of the Civil Procedure Code. As a matter of fact the so-called notice reads more like a petition to the Collector than a regular notice contemplated by section 80. In the first paragraph the plaintiff notifies the Collector of his intention to file a suit against Government. Then, after stating some facts and contending that the Prant Officer's order was *ultra vires* he concludes the alleged notice by requesting the Collector to reconsider the matter and to restore the suit land to him after making inquiry so as to avoid litigation and save him from unnecessary expense and trouble. It is thus more in the nature of a petition than a notice. It also does not state the relief or reliefs which the plaintiff seeks. It is settled law that the provisions of section 80 are explicit and mandatory and admit of no exceptions or implications and a failure to comply with them must result in the rejection of the plaint under Order VII, rule 11 of the Civil Procedure Code (Bhagchand v. Secretary of State, I. L. R. 51 Bom. 725).

4. As observed in paragraph 2 (i) above, the Prant Officer purporting to act under Rule 4 of the Resumption Rules of 1908 (see Phadnis Watan Act, 5th Edn., pp. 248-249) ordered that the suit land be resumed and restored to the former holder i.e. defendant No. 1. In paragraph 2 of the plaint the plaintiff states that the Deputy Collector "had no authority to pass the said order of resumption so as to nullify the sanction of the lease granted by his superior officer the Collector". It might therefore be contended that after the Collector had sanctioned the auction sale of the advance lease on 17th October 1938 and put the plaintiff in possession of the suit property (set sanad land) subject to the conditions mentioned in the plaintiff's statement (File p. 12) it was not open to the Prant Officer to resume the land under the rules of resumption on the ground that the discharged sanad had no saleable interest in it. The reply to this contention should be as under.

5. It is possible to make a distinction between two different capacities of the Collector, viz. (i) acting as a judicial officer under section 71 of the Civil Procedure Code, executing a decree transferred to him under section 68 of the Code and (ii) as an executive officer passing orders under the Rules of Resumption framed by Government under the rule making powers conferred on them by Act XI of 1852 and Acts II and VII of 1863 and reserved under the third clause of section 1 of the Bombay Hereditary Offices Act. In the first capacity, the Collector executing

a decree transferred to him by a Civil Court is in no better position than a Court executing a decree transferred to it for execution. He cannot go behind the decree. It is therefore not open to him to allow the validity of the order of sale to be questioned, nor, in this particular case, would it be open to him in the first capacity, to determine the question whether the judgment debtor (defendant No. 1) had or had no saleable interest in the property sought to be sold (see in this connection the remarks of Broomfield J. in *Sattappa v. Mahomed Saheb*, I. L. R. 60 Bom. 516 at p. 547). It is true that in the present case, the Collector while executing the decree referred the matter to the Court and brought to its notice the fact that Sanadis had no saleable interest in land and that the attachment on the suit land might therefore be removed. In the absence of the Collector's certificate under section 10 of the Watan Act, the Court declined to set aside the sale which had already been held. Accordingly the Collector accepted the recommendations of the Civil Court and confirmed the sale subject to the conditions agreed upon by the plaintiff in his statement (see pp. 61-62 of the File). This however could not prevent the Collector from acting in his second capacity as the executive officer and ordering resumption of the land under the Resumption Rules. The powers relating to sale in execution proceedings conferred on him by virtue of the rules framed by Government under section 70 of the Civil Procedure Code do not include the power to determine the alienability or otherwise of the property sought to be sold. In fact if any application to set aside a sale is made to him under Order XXI, rules 89, 90 or 91, the Collector has to forward the same to the Civil Court which passed the decree: [see High Court Civil Manual Vol. I (1940) p. 93]. It was therefore within the competence of the Collector to order resumption of the land and its restoration to the original holder. Besides the plaintiff has purchased the land in the auction sale with the knowledge that it was a discharged shet sanadi land allowed to be enjoyed without service and with an undertaking to arrange for service whenever required or to hand over possession of the suit land when the services would be required. It should therefore be urged that the plaintiff must be deemed to have purchased the land with an implied warning that the land was liable to be resumed and that he accepted the warning by agreeing to deliver back possession of the land at any time when services might be required. Under these circumstances, the order of the Prant Officer, to whom the powers of resumption seem to be delegated by virtue of section 10 of the Land Revenue Code, is legal and *intra vires*.

6. The plaintiff has claimed mesne profits at the rate of Rs. 50 per year. He has not given any particulars as to how he arrived at this figure. It should therefore be contended that the amount is excessive and that he is not entitled to mesne profits.

7. For these reasons it should be urged that the suit fails and must be dismissed with costs.

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Received on 20-7-43.

Registered on 20-7-43.

Decided on 8-1-48.

Duration - 1 year, 5 months and 19 days.

In the Court of the F.C. Sub-Judge, Dharwar,

At Dharwar.

Exh. 28.

Plunders.

L.C. Civil Suit No. 295 of 1943.

Plunders. Dated and
_____kar.

1. Rayappa Ningappa Dod-Ganiger of Hubsur

Taluka Hubli.

. . . Plaintiff.

Against.

xp.

1. Phakirappa Bharmappa Naik Agri. of Bennur

Tal. Navalgund.

Mr. Kigpur.

2. The Government of Bombay - The Bombay Province. Defts.

Claim Rs. 150/-.

The Plaintiff sues to recover possession of the plaint land or in the alternative to recover a sum of Rs. 150/- per year as damages -- accrued due before the date of suit and declaration of his right to -- recover damages for a period of 7 years more at the rate of Rs.50 per year and to recover costs of suit from the Defendants.

Plaintiff alleges in the plaint that he obtained a money decree against the Deft No. 1 and gave a darghast in execution and asked for the sale of the lease hold of R.S.No.30/4 of the village of Bennur in Navalgund Taluka belonging to the Deft No.1, that the execution papers were sent to the Collector of Dharwar as the Deft No. 1 was an agriculturist, that the lease hold for a period of 10 years was put up for sale by the Collector and the plaintiff purchased the same on 22-1-1938 for Rs.225-6-4, that thereafter an objection was raised by the Collector that the -- confirmation of sale on the ground that the land being shet Sanadi could not be sold, but that as a matter of fact, the land was a discharged shet Sanadi land and in addition the plaintiff undertook to arrange for shet Sanadi service if called upon during the period of the lease, that on a

reference to the Court for setting aside the sale, the Court refused to do so and recommended to the Collector for the confirmation of sale, that thereupon the Collector confirmed the sale on 17-11-38, that after the confirmation of sale, the plaintiff passed a rent note for ten years on 20-3-39 to the Government and got it registered, that the plaintiff was put into possession of the land as lessee on 14-5-39, that after getting into possession of the land, the plaintiff raised the crops therein but that at the instance of the Deft No. 1, the plaintiff was dispossessed of the land by the District Deputy Collector, III Division, Dharwar in February 1940 who handed over possession of the land to the Deft No.1, that the order of the said officer was illegal and ultra vires, that Govt was bound to keep him in possession of the land for the period of ten years especially when he had undertaken to render sanadi service, if necessary during the period of the lease, that he has suffered damages at the rate of Rs.50 per year, that he has given notice of suit to the Deft No. 2 as required by section 80 of the C.P.Code, that the cause of action for the suit arose in February 1940 when he was dispossessed and that this Court has jurisdiction to try the suit. Hence the suit.

The Deft No. 1 is absent and ex parte. The Deft No. 2 - The Provincial Government of Bombay - in its S.S. at Ex.17 contends that the suit was barred under section 4 (a) of the Bombay Revenue Jurisdiction Act, that it was also barred under section 11 of the said Act, that the notice given by the plaintiff was defective inasmuch as it does not fulfil the requirements of section 80 of the C.P.Code and that therefore the plaint should be rejected, that in sanctioning the sale of the lease hold and putting the plaintiff in possession, the Collector was acting as a judicial officer executing a decree transferred to him under section 68 of the C.P.Code, that he was not therefore prevented from acting in his executive capacity as Chief Revenue Officer of the District and from ordering the resumption of the land under the resumption rules, that the order of the Prant Officer was legal, that that Sanadi lands are not watan lands, that they are inalienable, that the Sanadi has no saleable interest in such land, that plaintiff had therefore no right to retain possession of the land, that plaintiff was not entitled to any of the reliefs sought, that the suit should be dismissed and his costs awarded.

On the above pleadings, the following issues were framed at Ex.25.

Issues

- (1) Is the suit barred under Paragraph 3 of section 4 (a) and section 11 of the Bombay Revenue Jurisdiction Act ?

- (2) Does the notice given by the plaintiff to the Deft No.2 conform to the provisions of section 80 of the C.P.Code; if not is the suit -- maintainable as against the Deft No. 2?
- (3) Has the Deft No. 1 no saleable interest in the plaint land; if so, did plaintiff get any interest in the said land by reason of the purchase of the lease hold in L.D.No.711 of 1935 of this Court?
- (4) Is the action of the Prant Officer in resuming the land and dispossessing the plaintiff after the confirmation of sale by the Collector, valid and legal?
- (5) If not; is plaintiff entitled to the possession sought?
- (6) What mesne profits is plaintiff entitled to and from which of the -- Defendants?
- (7) What decree should be passed?

Findings.

- (1) Yes, also under section 4 (a) paragraph 1.
- (2) Yes.
- (3) No; on both the parts.
- (4) Yes.
- (5) No.
- (6) Does not survive.
- (7) As below.

Reasons.

No oral evidence has been led in this suit. In fact no oral -- evidence is necessary. The facts alleged in the plaint have not been -- denied by the Deft No. 2 in its W. Statement. I shall first dispose of -- Issue No. 2. Ex. 24 is the notice given by the plaintiff to the Deft No.2 under section 80 of the C.P.Code. Section 80 requires that the notice -- should state the cause of action, the name, description and place of -- residence of the plaintiff and the relief which he claims. The notice -- given by the plaintiff fulfils all the three conditions mentioned above. . It was the argument of the Govt. pleader that the notice does not -- disclose the relief sought. That is not correct. The relief sought has been stated in the first part of the notice Viz :- 'I beg to notify my intention to file a suit against ^{the} Government of Bombay as a necessary party along with one Pekkirappa Bharnappa Naik of Bannur Taluka Navalgund for the possession and mesne profits of R.S.No.30/4 acre 5-21 assessment Rs.11-10-0 of Bannur Taluka Navalgund.' Next, the bundle of facts --

constituting the cause of action for the suit has been stated. The name, description and place of residence of the plaintiff has been stated both in the beginning and at the close of the notice. In my opinion the notice complies with the requirements of section 80 of the C.P. Code and it is valid and legal.

It is an admitted fact that the suit land is a Sanadi land. The services have been dispensed with for the time being and full assessment is levied and recovered from the Sanadi. The first point to be considered is as to whether Sanadi lands are watan lands. On this question there is a direct ruling of the High Court which I am bound to follow, the Government Resolutions to the contrary notwithstanding. That ruling is Vishnu Shankar Kulkarni V. Shankar Vasudev (35 Bom. L.R. page 114). Justice Baker observes as follows on page 115 - As regards the question of whether Shet Sanadi land is watan property under the Watan Act or not, the matter is really concluded by authority, though Government as the result of an inquiry held in 1900 came to the conclusion that they would not treat it as such. We have not got the materials before us on which Government based that conclusion, and we are still bound by the ruling in Limbaji V. Rama (1898 Printed Judgments page 127). Justice Broomfield observes on page 117 on the same question :- As to the question whether Shet Sanadi lands are watan or not, we are bound by the decision in Limbaji's case and with respect I see no reason to differ from that decision, the Government resolutions to the contrary notwithstanding. " Following the ruling mentioned above I hold that the plaint land was watan land.

The next question for consideration is whether the said land has retained the character of service watan land after the services have been dispensed with and full assessment levied. In 34 Bombay 560 (Yellappa Ramappa Kuri V. Marlingappa bin Chavedappa) Justice Chandavarker held on an interpretation of the rules made by the Govt under Bombay Act XI of 1852, that when the Sanadi services are dispensed with and full assessment levied on the Sanadi lands, the order passed and the action taken under the rules had in law the effect of converting the land from a Shet Sanadi Watan into Rayatwari holding and investing the holder of the land with the rights of an ordinary occupant, entitled to it so long as he paid the survey assessment. The facts in the case were as follows :- On the death in 1835 of the then Shet Sanadi, one Basayya, --

Government appointed one Yellappa as the new Shet Sanadi. But under the rule framed under Bombay Act XI of 1852, Government continued the Shet Sanadi land to the family of Basayya on condition of their paying full assessment on the lands. The remuneration of Yellappa was made payable out of the extra assess-

15 65

levied. In 1905 Government resumed the lands and handed them over to -- Yellappa for his services. Rule 5 of the rules which were in force in 1865 reads as follows :- ' whenever a Shet Sanadi is discharged without fault, because the service is no longer required, the land will remain in his -- possession subject to the survey assessment and no further demand can be made '. Justice J Chandavarkar observes as follows on 563:- One of the rules then in force and having the force of law under Act XI of 1862 -- provided that in case of the discharge of a Shet Sanadi without fault but because his service was no longer required, his Shet Sanadi land should be allowed to remain in his possession, subject to the survey assessment, and that no further demand could be made. And this is substantially what the Collector did in respect of the land in dispute on the death of Basya ^{in 1868}. The Shet Sanadi service required of Basya's branch of the family was dispensed with upon the ground that there was no longer necessity for it; full assessment was imposed upon the land and Basya's heir was allowed to remain in possession subject to the survey assessment. After that no further demand could be made from the person let into possession on that condition. Both the order passed and the action taken under the rule (i.e. rule 5 mentioned above) had in law the effect of converting the land from a Shet Sanadi ^{watan} into a Rayatwari holding and investing the holder of the land with the rights of an ordinary occupant, entitled to it so long as he paid the survey assessment. "

Now, the rules which were in force in 1865 were subsequently -- modified by G.R.No.1364 of 1878 under which the Government ordered resumption of the land by eviction or continuance of the same, subject to such conditions as the Collector or the Government may impose under the powers conferred by the amended rules. G.R.Nos.6891 of 1892 and 4926 of 1893 denied the hereditary right of the Sanadis to their watan and directed that the alienation of Sanadi lands ~~will~~ be dealt with under the rules published in G.R.No.1364 of 1878 (Vide Phadnis Vatan Act 1936 edition page 240, Appendix 11). The rules published in G.R.No.1364 of 1878 are to be found on page 18, Part II of the same book. These rules are practically similar to the rules published in G.R.No.10336, October 12 1908 (Vide page 243). The proviso to rule 4 of these rules reads as follows:- ' If ^{are} ~~Government~~ at any time satisfied that the service in respect of which any lands are held is no longer performed or that its performance is no longer necessary or in the case of service lands which the previous

the provisions of Bombay Act III of 1874 do not apply if it shall appear that the holder has been guilty of any serious offence or misconduct, Government will, in their discretion, direct either (1) the resumption of such lands or (2) the continuance of the same, subject to such new conditions as they shall deem fit to impose Rule 5 reads :- "When the Sanad issued in confirmation of any service commutation settlement expressly authorizes the alienation or transfer of the service lands, the same shall be continued without question to any lawful holder thereof on fulfilment of the terms of the Sanad. But in every other case contemplated by Nos. 2 of these rules, and in every case contemplated by Nos. 3 and 4 of these rules, if any land held for service shall at any time be or become alienated contrary to the provisions of Bombay III of 1874 or of any other law for the time being in force or in the case of land to which the provisions of Bombay Act III of 1874 do not apply, if the same shall be alienated or in any way encumbered without the previous sanction of Government, the said land shall if Government deem fit so to direct be forthwith resumed, 'anything in the said rules to the contrary notwithstanding.'"

It is with these rules with which we are concerned in this suit and not with the rules which were in force prior to 1878. There is no rule in the new rules corresponding to the old rule No. 5 which was in force in 1865 and which has been interpreted in 34 Bombay 560 by Justice Chandavarkar. Under the new rules, it is not possible to hold that a hereditary land becomes Khalsa or -- after land immediately after the services are dispensed with and full assessment is levied upon the land. Bombay Act III of 1874 (Bombay Hereditary Offices Act) is subject to Act XI of 1852 and the rules made thereunder. The rules -- mentioned above have been made by the Government under Act XI of 1852 and they must be given effect to. In the year 1910, there was a further reorganisation of the Sanadis and the following rules were laid down for dealing with the -- lands of the discharged Sanadis.

(1) Lands of discharged Sanadis should be continued as service Inam, if *required, so that they may be available for service if required*

(2) In case of discharged Sanadis whose lands have been sold away or -- mortgaged with possession or have been given up or become waste owing to the extinction of the family, the lands should be converted into ordinary or -- restricted Rayatwari Tenure, the person in possession being charged with the occupancy price as the Collector may consider desirable (Vide Bhadnis' Vatan Act, 1936 edition page 241 and also G.R.No.5370 of 1911). The second rule --

applied to alienations which had already taken place before the issue of the G. O. No. 5370 of 1911.

In the present case, the Sanadi services were dispensed with and full assessment on the land levied, presumably after the reorganisation of the Sanadies in the year 1910. In any case, it is after the year 1878 when new rules were framed modifying the rules which were first made under Act XI of 1852. So, under the new rules, the character of the land is not changed simply because the services of Sanadi have been dispensed with -- and full assessment levied. It continues to be service Inan land and the services of the Sanadi may be made available, if required, at any time. So even now, the land is a Service Inan Land and must be dealt with as -- such. The distinction between the new and old rules was either not present in the minds of their Lordships in Vishnu V. Shankar(35 Bom.L.R.114) or that the case was governed by the old rules just as the case in 34 Bombay 560. Moreover, it was not the plaintiff's case that the tenure of the -- plaint land was changed on account of the commutation of service and the levy of full assessment on the land. Under the new rules, unless the Sanad issued in confirmation of any service commutation settlement expressly authorises the alienation or transfer of the service lands, the lands -- remain inalienable and the Collector is given full authority to resume them forthwith in case of unauthorized alienations. The plaintiff has not proved that the power of alienation was given to the Deft No. 1 or his ancestor when the Sanadi services were dispensed with and full assessment levied. Whether the land be service watan land governed by Act iii 1874 or not, still under rule 5 the Collector's power of resumption ~~comes~~ into play in case of an unauthorized alienation. If Act iii of 1874 applies, then the alienation is contrary to Section 23 of the said Act read with Section 10.

It appears that the fact that the land was a Shet Sanadi land came to the notice of the Collector after the sale was held but before its confirmation. He therefore sent the sale papers to the Subjudge Dharwar with the following endorsement :- Government have now decided that -- Sanadi lands are service lands, and that Sanadies have no saleable -- interest in such lands. S.No. 30/4 of Benmur, being a Shet Sanadi land the decree cannot be enforced by its sale. The attachment placed by the Civil Court on this land may, therefore please be removed(Vide Ex. 21). The Sub-judge Mr. M.S. Hegde - wrote back saying : - ' That the lease

sale was held on 22-1-38. There is no certificate of the Collector to the effect that the property is not liable to process of civil court under the Auction Act. As the sale has already been held, I cannot set it aside at this stage. However, it may be confirmed subject to the conditions laid down in the purshis of the decree holder (Ex. 19) which accompanies." This purshis is at Ex. 23. It is to the effect that ~~him~~ he (the present plaintiff) will make arrangements for service, if necessary or to give up possession of the land in case service is demanded by the Government from the j-debtor(Deft No.1). On receipt of this reply from the civil court, the Collector confirmed the sale but asked the Mamlatdar to submit the papers back to him for further necessary action after the Kibja proceedings are completed as the land sold was a Sanadi land (Vide Ex. 21).

Accordingly after the lease deed was passed and possession given to the plaintiff, resumption proceedings were started under the resumption rules of 1908 and as laid down by G.R.R.D. No.5213/28 dated 7-4-1937 and the District Deputy Collector, III Division passed the following order on 18-1-40 :- ' S. No.30/4 of Benmar is a Shet Sanadi land burdened with the condition that the discharged Sanadi shall perform the Sanadi service when called upon, since the tenure of the land is not changed. The discharged Sanadi has no saleable interest in the said land. As such the advance lease sale for ten years amounts to alienation. Hence the said land shall be resumed from the possession of the bidder and restored to the former holder under rule 4 of the resumption rules of 1908 as laid down in G.R. R.D. No.5213/28 of 7-4-1937 (Vide Ex. 22). As per this order, plaintiff was dispossessed in February 1940 and the possession was handed back to the Deft No.1.

One of the contentions of the plaintiff is that the Collector ~~was~~ sanctioned the sale of the leasehold. it was not open to the District Deputy Collector to order the resumption of possession. There is no force in this contention. In executing a decree transferred to the Collector under section 68 of the C.P.Code, the Collector and his subordinates shall be deemed to be acting judicially(Vide Section 71 of the C.P.Code). The Collector, executing a decree transferred to him by the civil court is in no better position than a court executing a decree transferred to it. He has no right to go behind the order for sale passed by the civil court(Vide 38 Bom. L.R.221). In view of the reply he got from the civil court to his request for the removal of attachment on the land, the Collector had no other alternative but to confirm the sale. But his powers as the Chief Revenue authority in the District, ~~was~~

in no way affected by this confirmation of sale. As a matter of fact -- the Collector has made it clear whilst confirming the sale that immediately after the auction-purchaser was put into possession of the land, he should take steps to resume the land under the powers vested in him by the resumption rules of 1908. The order of the Prant Officer in resuming possession of the land in question is therefore legal and cannot be set aside.

On the assumption that the land still retains the character of -- Service Watan Inam land, the suit is clearly barred under section 4 (a) clauses 1 and 3 and also under section 11 of the Revenue Jurisdiction Act. Section 4 (a), clauses 1 and 3 read as follows :- Subject to the -- exceptions hereinafter appearing, no civil court shall exercise jurisdiction as to any of the following matters (1) claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. 111 of 1874 or any other law for the time being in force or of any other village office or servant or (2) suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by Govt or any officer duly authorized in that behalf.

This is a suit relating to the property of a village servant, -- against the Government. It is an officer of Government who ordered the dispossession of the plaintiff. The pliff's claim for possession of the land is as much against the Government as against the Deft No. 1. Plaintiff has impleaded the Government to the suit presumably because he wants that the decree for possession which he has sought, should be -- binding upon the Govt. His claim for declaration of his right to -- damages is also against the Government. The prayers made by him involve the setting aside or avoiding the order passed by the Prant Officer resuming possession of the land. That comes under the mischief covered by clause 3. In 28 Bombay 435, it has been held that a suit against the Government relating to a Shet Samadi land was barred under section 4(a) clause one of the Revenue Jurisdiction Act. If the suit is barred -- against the Government, it follows that it is also barred against the Deft No. 1. If the Govt is competent to take the land from the plaintiff, it is clear that plaintiff cannot sue the deft No. 1 for -- possession to whom possession has been made over by the Govt. Further, it is an admitted fact that the plaintiff preferred no appeal to the

Collector or Commissioner against the order of resumption passed by the Prant Officer, although appeals lay to higher authorities. Section 11 of the Revenue Jurisdiction Act provides that 'No civil court shall entertain any suit -- against Government on account of any act or omission of any Revenue Officer -- unless the plaintiff first proves that previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force ~~as~~ within the period of limitation allowed for bringing such suit, it was possible to present.' Although the plaintiff has filed this suit more than three years after his dispossession, he preferred no appeal ~~g~~ against the order of resumption passed by the Prant Officer. The suit therefore appears to be barred under section 11 of the Revenue Jurisdiction Act as well.

In view of the fact that the land is still a service Inam land, that the Govt might at any time ^{requisition} require the services of the Sanadi and that under the rules of resumption made by the Government in 1908, any alienation of such land without Government's sanction is prohibited, it would follow that the Sanadi had no saleable interest in the land held by him. There is also no element of surprise so far as the plaintiff is concerned. He very well knew the views of the Government on the point. He has undertaken to take all the risks of a -- purchase of the lease hold of the Sanadi land (Vide Ex. 23). If the purchase turns out to be infructuous, he must thank himself for the same. I record my findings as above upon the issues and pass the following order

Order

Suit dismissed with costs. Plaintiff to pay the costs of the Dept 2. Deft No. 1 to bear his own costs, if any.

8-1-1945.

Sd. M.S.Bagali.

F.C.S.J.

Typed by

Compared by

True Copy
S. Prasad
In Dist Govt Pleader
Clerk of the Court.

Copy was applied for

on the (21) 25

Clerk of the Court.

It was ready for delivery on the ()

Clerk of the Court.

It was

Clerk of the Court.

Decree

Ex. 29.

L.C. Civil Suit No. 295 of 1943.

In the Court of the First Class Sub-Judge,
at Dharwar.

L.C. Suit No. 295 of 1943.

Plaintiff :- Royappa Mingsappa Doddaganiger age 60 years, caste Lingavant,
Occupation Agriculturist, of Hebsur Taluka Hubli.

Versus.

Defendants :- (1) Phakkirappa Bharamappa Naik, age about 36 years, occupation Agriculturist, caste Kurbar, of Benmur Taluka Navalgund.

(2) Government of Bombay - Th Bombay Province.

Plaint presented on 20-7-1943.

Plaint filed on 20-7-1943.

Claim Rs. 150/-.

For jurisdiction Rs. 225-6-4.

Herein the above named plaintiff begs to submit as under:-

(1) Plaintiff having obtained a money decree against the Defendant No. 1, proceeded against the suit property of the Defendant No. 1 viz S. No. 30/4 acres 5-21 assessment Rs. 11-10-0 of the village Benmur Taluka Navalgund in L.D. No. 711 of 1935 of this Court. The said --
Darkhast was sent to the Collector of the District Dharwar for execution. The lease hold of the said land was duly put up for auction and the plaintiff as the highest bidder purchased the advance lease for 10 years therein for Rs. 225-6-4 on 22-1-1938. Thereafter an objection was raised by the said Collector that the land being one of the Shet Samadi could not be sold. But it was found that the land was a discharged Shet Samadi one. And in addition the plaintiff undertook in writing to make necessary arrangements for Shet Samadi service if

required during the period of the lease on 5-9-1938. The matter was further referred to the subjudge of this Court who sent back the papers with an observation that the sale could not be set aside by him and with the recommendation to the Collector for the confirmation of the said sale. The Collector thereon confirmed the sale on 17-11-38. Consequently the said Darkhest was disposed of as fully satisfied. After the confirmation of the said sale by the Collector, the plaintiff passed the requisite rent note for ten years on 30-3-39 to the Government and the same was duly registered. The plaintiff was finally put in possession of the said land as the leasee on 14-5-1939, and the receipt for the same was passed on the same day to the Government. Under the auction sale as well as the said rent note the plaintiff is entitled to hold the suit land as a lessee for ten years from 1939-40 to 1949-50; and the Government is under the obligation to maintain him in possession of the suit land for a period of ten years.

(2) On getting possession of the suit land the plaintiff had raised crops therein. But at the instance of defendant No.1 who had applied for resumption of the suit land, the plaintiff was dispossessed of it and the Deft No. 1 was put in possession of the same by the order of the District Deputy Collector III Division Dharwar in February 1940. The said Deputy Collector had no authority to pass the said order of resumption so as to nullify the sanction of the lease sale granted by his superior officer the Collector.

The order was passed behind the back of the plaintiff even without a notice to him. The officer has failed to observe proper procedure. The plaintiff an auction purchaser of lease right has stepped into the shoes of the Defendant No. 1 and has acquired his right of enjoyment of the suit land for the period, and he (plaintiff) has further undertaken his (Deft 1's) liability of service during the said period. So the said order of the said officer is not only incorrect and contrary to procedure and equity but also illegal and without authority. So are also the consequent dispossession and possession illegal. Deft No. 1 is not entitled to question the lease sale and disturb the possession of the plaintiff under it. So his present possession of the suit land is both illegal and unfair. The Government - Deft No. 2 is also bound to keep the plaintiff in possession of the suit land for lease period of ten years under the lease. And the plaintiff is entitled to get back the possession of the suit land and mesne profits due for the years of dispossession. The annual rental value of the suit land is not less than Rs.50/- a year. So the plaintiff is entitled to Rs. 150/- as the past mesne profits of the last

25 219

3 years.

(3) The requisite notice to file his suit has been served on the -- Collector of District Dharwar by the plaintiff under Section 80 C.P.C. in September 1942.

(4) The cause of action for possession has arisen in February 1940 and for mesne profits in March every year thereafter.

(5) This Court has jurisdiction to try this suit as the Government of Bombay(Bombay Province) is a party to this suit as Deft 2. The cause of action has also arisen within the jurisdiction of this Court and -- Defendant No. 1 also resides therein.

(6) The suit is valued for the purposes of jurisdiction at Rs.225-6-4 - the lease sale price. And for the purposes of Court fee it is -- valued at Rs. 150/- that being the higher of the two prayers viz. for -- possession of the suit land at Rs. 86-15-0. The seven and half times of the assessment and for the alternative ^{one of} ~~for the~~ mesne profits of last 3 years at Rs. 150/-

(7) The plaintiff prays that :-

- (a) The suit land be restored to the possession of the plaintiff as per auction purchase and the consequent lease deed
- (b) and in alternative at the option of the plaintiff that -- plaintiff be awarded the mesne profits Rs.150/- as past and future at Rs. 50/- a year for the years of dispossession of the lease period ^{from} ~~to~~ both the Defendants.
- (c) Costs of the suit
- (d) and such other reliefs as plaintiff be found entitled to on the facts of the case.

This suit coming on this day for final disposal before Mr. H.S. Bagali First Class Subjudge, Dharwar in the presence of Messrs. Waded and Punekar pleaders for the plaintiff and of Mr. Malapur Govt. pleader for Deft No.2 and Deft No. 1 exparte and it is ordered and decreed that Suit dismissed with costs. Plaintiff to pay the costs of the Deft No.2. Deft No. 1 to bear his own costs, if any.

Costs of suit.

Plaintiff.			
	Rs.	A.	P
(1) stamp for plaint.	11-	4-	0
(2) Do for power	0-	8-	0

(3) Do for Exs. 6, 7, 26 & 27.	2-4-0
(4) Pleador's fees on (Minimum)	15-0-0
(5) Subsistence for witnesses.	0-0-0
(6) Commissioner's fee	0-0-0
(7) Copying fee & stamp.	0-0-0
(8). Service of process (Ex.7)	<u>1-8-0</u>
Total	30-8-0
Rejected applications.	<u>1-4-0</u>
Total	29-4-0

Defendant No. 2

	Rs. A. P.
(1) Stamp for power.	0 -0 -0
(2) Do for petition (Exs. 10, 11, 12, 13, 14, 15, 16, 18 and 19).	5-6 - 0
(3) Pleador's fee on (Minimum)	15 -0 - 0
(4) Subsistence for witnesses	0 -0- 0
(5) Service of process.	0 -0 -0
(6) Commissioner's fee.	0 -0 -0
(7) Copying fee and stamp.	<u>0 -0 -0</u>
Total	20 -6 -0
Rejected applications.	<u>3-10 -0</u>
Total	16-12- 0

Given under my hand and seal of this Court this 8th day of January 1945.

Sd. B.V. Gadad.

[Signature]

Sd. S.N. Puneekar. Pl.

Sd. R.B. Waded

Plaintiff's pleader.

Sd. M.S. Bagali.
First Class Subjudge.
16-1-1945.

Sd. S.R. Malapur.
Asst. Govt. Pleader.

Defendant's pleader.

Typed by

Compared by

True Copy

[Signature]

[Signature]
Clerk of the Court.

25 29

Suits:

Dharwar.

For possession of the suit land bearing Survey No. 30/4 situated in the village of Bommapura, taluka Naval Gund and in the alternative, at plaintiff's option for recovery of Rs. 150 from the defendant & his mesne profits and costs.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 1602
Bombay Castle, 28th February 1945.

Read Government Resolution, Legal Department, No. 5029 dated the 17th July 1944.

Letter from the District Government Pleader, Dharwar, No. 28, dated the 18th

In the Court of the First Class Sub-Judge,
Dharwar.

Civil Suit No. 295 of 1943.

Rayappa Ningappa Doddaganiger Plaintiff;
versus

(1) Fakirappa Bharmappa Naik;
(2) The Province of Bombay Defendants.

January 1945,
stating that
the suit noted
in the margin
was decided by

the First Class Sub-Judge, Dharwar, on 8th January 1945, when the following order was passed:-

"suit dismissed with costs. Plaintiff to pay the costs of the the defendant/^{No. 2.} Dept. No. 1 to bear his own costs, if any."

Letter from the District Government Pleader, Dharwar, No. 106, dated the 14th February 1945, forwarding uncertified copies of the judgment and decree.

RESOLUTION:- The result of the suit is recorded.

By order of the Governor of Bombay,

Original

Signature

P.N. MOOS.

for { Secretary to Government.

To

The Revenue Department.
The Commissioner, S.D.
The Collector of Dharwar.

*Submitted
for approval & signature -*

Issued
CBP
28/2
RM
23/2
P.A. Mr. ...
Please always ...
No. 1 page of the ...
in the S.D. ...
20.1.18-1-1855?
I cannot find ...
refer to the file ...
A.S.
24/2

Submitted after issue.

Rlc in' No. J. Nov. 9/44.

BM
H/3

P.A:

Rlc
8/1/3

↓
Nov. 9/44
2/3/44

27 58
Civil Appeal No.59 of 1945.

In the Court of the District Judge,
at Dharwar.

Appellant:- Rayappa Ningappa Doddaganiger, age 61, caste Lingayat
occupation agriculture of Hebsur Taluka Hubli.

Vs.

Respondent:-1. Fakirappa Bharmappa Naik, age about 37, caste Kurba
occupation agri. of Bennur Taluka Navalgund.

2. The Government of Bombay, The Bombay Province.

Claim Rs.150/- for court-fees
" Rs.225/- for jurisdiction.

The above named appellant begs to appeal against
the judgment and decree in L.C.Suit No.295 of 1943 of the F.C.
Sub-Judge, Dharwar, on the following amongst other grounds.

1. The judgment and decree of the lower court are contrary to law and facts in the case.
2. The lower court ought to have decreed the plff's claim,
3. It ought to have been held by the court below that the suit land was ryotwari holding and not shetsanadi or watan, land.
4. The lower court ought to have held that when the Government held it was ryotwari its subordinate officers have neither right nor power to hold it as shetsanadi.
5. The lower court ought to have held that the Prant - Officers' order in resuming the land from the possession of the appellant was illegal and ultra vires.
6. It ought to have been held by the lower court that the subsequent orders or resolutions of the Government do not and cannot change the nature -- the land from the ryotwari to watan.
7. the G.Rs. of 1878, 1892 and 1893 in this connection have not been properly construed by the lower court.
8. The lower court was wrong in holding that the services regarding the suit land were dispensed with in the year 1910 when new rules were framed.
9. It ought to have been held that the rules framed subsequent to those framed under Act XI of 1852 have no force of statutory law and that the new rules cannot supercede those framed under * Act XI of 1852.

10. The lower court ought to have held that the alienation of the land was not an unauthorised one and that the sale in favour of appellant was legal and valid.

11. It ought to have been held that at any rate during the life time of deft No.1 the Collector had no power to resume the land and to dispossess the appellant.

12. It ought to have been held that the Collector confirmed the sale as per conditions of the pūrsis Ex.19 that he or his subordinate officers could not go against this position and that they are estopped from doing so.

13. The lower court has wrongly held that the suit is barred under section 4(a) clauses 1 and 3 of the Revenue Jurisdiction Act.

14. It is wrongly held that the suit is barred by section 11 of the Revenue Jurisdiction Act.

15. The lower court ought to have held that the plff's suit is not barred by any of the provisions of the Revenue Jurisdiction Act as the order of the Prant Officer is illegal and ultra vires as the land is a ryotwari land.

16. The lower court ought to have held that deft No.2 was liable to give the damage as claimed by the plff in case plff is not entitled to the possession of the suit land.

17. The order as to costs ~~is~~ is wrong.

On these among other grounds the appellant humbly prays ~~that~~ that the judgment and decree of the lower court be reversed and that plff's suit be decreed with costs throughout.

Dharwar,
17-2-1945.

Drafted and presented by
Sd/ G.R.Nalvadi
Pleader.

Received on 17-2-45

Registered on 3-3-45

Decided on 2 8-10-46

Duration 1 year, 7 months and 19 days.

In the District Court of Dhawar.

At Dhawar.

Ex. No. 10

Appeal No. 59 of 1945 from decree in suit No. 295 of 1943 of the District Court of the Civil Judge, Senior Division, Dhawar (Public).
Ruyappa Ningappa Podganiger of Hebsur Taluka ~~XXXXXX~~ Appellant.
ant. (Principal plaintiff)
against.

1. Fakirappa Bharamappa Naik of Bennur Taluka ~~XXXXXX~~.

2. The Provincial Government of Bombay.

Respondents. (Principal Defendants).

Claim Rs. 150/-, Rs. 225/- for Jurisdiction.

F I N A L J U D G M E N T.

This appeal arises out of a dispute relating to a discharged Shet Sanadi land. The facts which have led to this litigation are these. The plaintiff obtained a money decree against deft. No. 1 who is a discharged Shet Sanadi. He put the decree into execution in L. D. No. 711 of 1935 of the Dhawar Court and attached T. No. 30/4 which is the Shet Sanadi land, and brought it to sale through the collector. The lease-hold of the land for ten years was put up for sale and was purchased by the decree-holder himself on 22-1-1938 for Rs. 225/- and odd. It then came to the notice of the collector that the land being a discharged Shet Sanadi land, was not liable to be sold in execution of a money decree against the Shet Sanadi. In June 1938 the collector brought this defect to the notice of the Court and requested it to set aside the sale as the Sanadi had no saleable interest therein. When this reference was made, the decree-holder put in a purshis dated 5-9-1938 to say that the Sanadi service of the defendant has been dispensed with and full assessment was levied. He further undertook that in case Sanadi services were required he would make arrangement for it and was even willing to give up his possession if ordered by the collector. The Court on this purshis informed the collector that the sale having already taken place it could not order that it should be set aside and that in view of the purshis of the decree-holder, the sale may be confirmed. Accordingly the sale was confirmed on 17-11-1938. Thereupon the plaintiff executed a lease deed on 20-3-1939 and he was put in possession of

the land on 14-5-1939. In the meantime the proceeding had been sent to the Mamlatdar to take steps to resume the land since it was Shet Sanadi land and not liable to process of a Civil Court. It seems on receipt of the report of the Mamlatdar the District Deputy Collector resumed the land by dispossessing the plaintiff on 15-2-1940 and he delivered back the land to the discharged Shet Sanadi, Defendant No.1. Thereupon the plaintiff gave notice of the suit to the Government, and he has filed the present suit to recover possession of the land and for past mesne profits for three years making both the Shet Sanadi and the Government Defendants to the suit. His main ground of attack was that the Collector having once confirmed the sale the District Deputy Collector had no authority to resume the land and hand it over to Defendant No.1 and therefore his action was ultra vires. Left No.1 remained absent. It is the Government which is contesting the plaintiff's claim. It contends that the land being Shet Sanadi land Defendant No.1 had no saleable interest therein and the order of the District Deputy Collector resuming the land under the Resumption Rules was correct and legal. It also contended that the suit was barred under para 3 of section 4 (a) and section 11 of the Bombay Revenue Jurisdiction Act. It also contended that the notice was defective but that contention is not pressed here.

2. The lower Court upheld the Defendant No.1 contentions and dismissed the plaintiff's claim. Against that decision the plaintiff has come in appeal.

3. The questions for decision are:-

- i. Whether the resumption order is legal?
- ii. Whether the suit is barred under para 3 of section 4 (a) and section 11 of the Bombay Revenue Jurisdiction Act?

4. Mr. Nalvadi for the appellant conceded that if the land is held to be still Service Inam land in spite of the fact that the Sanadi service has been dispensed with and full assessment levied, then his suit would be barred under the provisions of the Bombay Revenue Jurisdiction Act. He however contended on the strength of certain rulings of our High Court that as the Sanadi service has been dispensed with and full assessment levied, the land ceased to be a service Inam land and its tenure becomes Khalsa or Rayatwari which is an alienable tenure. In support of this contention he relied upon the ruling in Yellappa v. Marilingappa (12 Bom. L.R. 577) the facts of which

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which are these:- " In 1365 a Shet Sanadi on being discharged was without fault from his office by Government was, under the Rules then in force, but full survey assessment was imposed thereon. Def. No.2 who was appointed the new Shet Sanadilndr. In 1905 the Government resumed the lands and handed them over to Defendant No.2. This action of Government was challenged and it was held. The order passed and the action taken under the rule by Government had in law the effect of converting the lands from Shet Sanadi vatan into a Rayatwari holding and inverting the holder of the land with the rights of an ordinary occupant, entitled to it so long as he paid the survey assessment". This ruling was followed in Vishnu V. Shanker (35 Bom.L.R. 114) to which Government was not a party. Whether a Shet Sanadi land is vatan under the Hereditary Offices Act or it is a service Inam land it is not necessary to determine in this case. The only question for decision is whether by dispensing with the Shet Sanadi services and levying full assessment the land is turned into a rayatwari holding. If Yellappa V. Marlingappa is followed, then certainly the land will have to be held to be rayatwari holding. But the decision in that case was based on the Resumption Rules of the year 1865. The pertinent Rule is Rule No.5 which was as follows: "Whether a Shet Sanadi is discharged without fault because the service no longer required the land will remain in his possession subject to the survey assessment and no further demand can be made". It is on the interpretation of this Rule ~~xxxxxx~~ that the decision in Yellappa V. Marlingappa is based. But this Rule was dropped and amended Rules were framed in the years 1873 and 1903. which are similar and which were given on page 18 II and page 243 part 1 of Phadnis Vatan Act respectively. The authority of Government to frame these Rules under Act VI of 1352 is not questioned. On going through these Rules we find nothing in them which supports the contention of the Plaintiff that because the service is dispensed with the full assessment is levied temporarily the land becomes a rayatwari holding. I may also point out that the Sanadi services in this case is not disposed for good. It is dispensed with only temporarily and the land is stated to be Japti Sanadi land, and full assessment is to be levied during the period service is not demanded of the Sanadi. Not only this but on account of further recognition

of the Sanadis in 1910 some more Rules were laid down for dealing with the lands of the discharged Sanadis by G.R.No.5370 of 1911. One of the Rules is "Lands of discharged Sanadis should be continued as service Inam, so that they may be available for service if required". It is by the amended Rules of 1908 and Rules made in 1911 that the present case is governed. It is thus clear that the land does not cease to be service Inam land simply because temporarily the service the Shet Sanadi is dispensed with and during that period full assessment is levied. The decision therefore in Yellappa V. Marlingappa based as it is on a different set of Rules has no application to the present case. If this is be the view, it was conceded by Mr. Malvadi that the action of the District Deputy Collector would not be ultra vires and that this case would be barred under section 4 (a) (3) and section 11 of the Bombay Revenue Jurisdiction Act.

5. I therefore agree with the finding of the lower Court, and the result is that the appeal fails.

D. P. P. R.

The decree of the lower Court is confirmed. The appeal is dismissed with costs.

*3th October 1946.

Sd/ R. K. Talavi

District Judge

C. 1. No. 59/45.

Grounds of Appeal...

1. The judgment and decree of the lower Court are contrary to law, and facts in the case.
2. The L.C. ought to have decreed the plaintiff's claim.
3. It ought to have been held by the Court below that the suit was rayatwari holding and not Shet Sanadi or Watani land.
4. The lower Court ought to have held that when the Government held it as rayatwari its subordinate Officers have neither right nor power to hold it as Shet Sanadi.
5. The L.C. ought to have held that the Prant Officer's order in resuming the land from the possession of the appellant was illegal and ultra vires.
6. It ought to have been held by the lower Court that th

the subsequent orders or resolutions of the Government do not, and cannot change the nature of the land from Rayatwari to Watan.

7. The G.Rs. of 1873, 1892 and 1893 in this connection have not been properly construed by the lower Court.

8. The lower Court was wrong in holding that the service regarding the suit land were dispensed within the year 1910 when new rules were framed.

9. It ought to have been held that the rules framed subsequent to those framed under Act XI of 1853 have no force of statutory law and that the new rules cannot supersede those framed under Act XI of 1852.

10. The L.C. ought to have held that the alienation of the land was not an unauthorised one and that the sale in favour of appellant was legal and valid.

II. It ought to have been held that at any rate during the life time of Defendant 1 the Collector had no power to resume the land and to dispossess the appellant.

12. It ought to have been held that the Collector confirmed the sale as per conditions of the patta by 13 that he or his subordinate officers could not go against this position and that they are estopped from doing so.

13. The L.C. has wrongly held that the suit is barred under Sec. 11 (a) clauses 1 and 2 of the Revenue Jurisdiction Act.

14. It is wrongly held that the suit is barred by section 11 of the Revenue Jurisdiction Act.

15. The L.C. ought to have held that the plaintiff's suit is not barred by any of the provisions of the Revenue Jurisdiction Act as the order of the Prant Officer is illegal and ultra vires and as the land is Rayatwari land.

16. The L.C. ought to have held that Defendant No. 2 was liable to give the damages as claimed by the Plaintiff in case Plaintiff is not entitled to the possession of the suit land.

17. The order as to costs is wrong.